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State v. Edwards Appellant's Brief Dckt. 43596

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 43596
)	
v.)	ADA COUNTY NO. CR 2010-19266
)	
ZACHARY DYLAN EDWARDS,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Zachary Dylan Edwards was on probation for burglary and grand theft, with an underlying sentence of ten years, with two years fixed, for each offense, to be served concurrently. After he admitted to violating his probation, the district court revoked his probation and executed the aggregate ten-year sentence. Mr. Edwards appeals from the district court's order revoking probation.

Statement of the Facts & Course of Proceedings

In December of 2010, the State charged Mr. Edwards with two counts of burglary and one count of grand theft. (R., pp.44–45.) Mr. Edwards pled guilty to one count of burglary and grand theft. (R., pp.49, 58.) The district court sentenced him to ten years,

with two years fixed, for each offense, to be served concurrently, suspended execution of the sentence, and placed him on probation for ten years. (R., pp.68–70.) In February of 2012, the district court found that Mr. Edwards violated his probation, but reinstated probation with the additional requirement that Mr. Edwards participate in Drug Court. (R., p.142.) In December of 2012, Mr. Edwards was discharged from Drug Court for failing to adhere to its rules and regulations. (R., p.166.) The district court again found that Mr. Edwards violated his probation. (R., pp.180, 184.) The district court revoked his probation, executed the underlying sentences, and retained jurisdiction (“a rider”). (R., pp.184–86.) In November of 2013, the district court reinstated probation after a rider review hearing. (R., pp.189–93.)

In August of 2015, the State filed a Motion for Probation Violation. (R., pp.211–14.) Mr. Edwards admitted to two violations for using “bath salts” and one violation for failing to maintain employment, seek employment, or be enrolled as a student. (R., pp.212–13; Tr. Vol. I,¹ p.12, L.25–p.13, L.10, p.18, L.22–p.20, L.1, p.20, L.23–p.21, L.9.) Mr. Edwards waived an updated presentence investigation report. (Tr. Vol. I, p.9, Ls.23–24, p.16, L.18–p.17, L.21, p.21, Ls.5–9.) At the disposition hearing, Mr. Edwards requested that the district court retain jurisdiction. (Tr. Vol. II, p.13, Ls.1–3, p.13, Ls.20–23.) In the alternative, he requested that the district court reduce his sentence pursuant to Idaho Criminal Rule 35 to five years, with two years fixed, noting “[t]his is a five-year-old case at this point.” (Tr. Vol. II, p.13, Ls.14–19.) The district court revoked his probation and executed the underlying sentences. (Tr. Vol. II, p.18, L.21–p.19, L.23.) The district court also denied his motion to reduce his sentence. (Tr. Vol. II, p.20, Ls.3–

¹ There are two transcripts on appeal. The first, cited as Volume I, contains the admit/deny hearing. The second, Volume II, contains the disposition hearing.

14.) On September 10, 2015, the district court entered an Order of Revocation of Probation and Imposition of Sentence and Commitment. (R., pp.248–50.) Mr. Edwards filed a timely notice of appeal from the district court’s order revoking probation. (R., pp.252–53.)

ISSUE

Did the district court abuse its discretion when it revoked Mr. Edwards’s probation and executed his aggregate sentence of ten years, with two years fixed?

ARGUMENT

The District Court Abused Its Discretion When It Revoked Mr. Edwards’s Probation And Executed His Aggregate Sentence Of Ten Years, With Two Years Fixed

The district court is empowered by statute to revoke a defendant’s probation under certain circumstances. I.C. §§ 19-2602, -2603, 20-222. The Court uses a two-step analysis to review a probation revocation proceeding. *State v. Sanchez*, 149 Idaho 102, 105 (2009). First, the Court determines “whether the defendant violated the terms of his probation.” *Id.* Second, “[i]f it is determined that the defendant has in fact violated the terms of his probation,” the Court examines “what should be the consequences of that violation.” *Id.* The determination of a probation violation and the determination of the consequences, if any, are separate analyses. *Id.*

Here, Mr. Edwards does not challenge his admissions to violating his probation. (Tr. Vol. I, p.12, L.25–p.13, L.10, p.18, L.22–p.20, L.1, p.20, L.23–p.21, L.9.) “When a probationer admits to a direct violation of her probation agreement, no further inquiry into the question is required.” *State v. Peterson*, 123 Idaho 49, 50 (Ct. App. 1992). Rather, Mr. Edwards submits that the district court abused its discretion by revoking his

probation. In the alternative, he submits that the district court abused its discretion by denying his Idaho Criminal Rule 35 (“Rule 35”) motion for a reduction of the indeterminate portion of his sentence.

“After a probation violation has been proven, the decision to revoke probation and pronounce sentence lies within the sound discretion of the trial court.” *State v. Roy*, 113 Idaho 388, 392 (Ct. App. 1987). “A judge cannot revoke probation arbitrarily,” however. *State v. Lee*, 116 Idaho 38, 40 (Ct. App. 1989). “The purpose of probation is to give the defendant an opportunity to be rehabilitated under proper control and supervision.” *State v. Mummert*, 98 Idaho 452, 454 (1977). “In determining whether to revoke probation a court must consider whether probation is meeting the objective of rehabilitation while also providing adequate protection for society.” *State v. Upton*, 127 Idaho 274, 275 (Ct. App. 1995). The court may consider the defendant’s conduct before and during probation. *State v. Roy*, 113 Idaho 388, 392 (Ct. App. 1987).

A similar standard is used for the Court’s review of the grant or denial of a Rule 35 motion. “A Rule 35 motion for reduction of sentence is essentially a plea for leniency, addressed to the sound discretion of the court.” *State v. Carter*, 157 Idaho 900, 903 (Ct. App. 2014). The Court must “consider the entire record and apply the same criteria used for determining the reasonableness of the original sentence.” *Id.* The Court “conduct[s] an independent review of the record, having regard for the nature of the offense, the character of the offender and the protection of the public interest.” *State v. Burdett*, 134 Idaho 271, 276 (Ct. App. 2000). “Where an appeal is taken from an order refusing to reduce a sentence under Rule 35,” the Court’s scope of review “includes all information submitted at the original sentencing hearing and at the subsequent hearing

held on the motion to reduce.” *State v. Araiza*, 109 Idaho 188, 189 (Ct. App. 1985). “When presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion.” *State v. Huffman*, 144 Idaho 201, 203 (2007).

In this case, Mr. Edwards submits that the district court erred by revoking his probation because his probation was achieving its rehabilitative objective. Similarly, he submits that the district court erred by denying his Rule 35 motion because Mr. Edwards’s sentence was excessive in light of the new and additional information since his initial sentencing.

Mr. Edwards was nineteen years old when he was originally sentenced for burglary and grand theft. He grew up in an “incredibly dysfunctional home.” (Tr. Vol. II, p.9, Ls.20–21.) His father was an abusive alcoholic and methamphetamine addict. (Presentence Investigation Report (“PSI”),² p.6.) His father was physically abusive to Mr. Edwards, his siblings, and his mother. (PSI, p.6.) Mr. Edwards stated that he would wake up as a child to his father “on top of my mom hitting her,” and he would have to call the police. (PSI, p.6.) There was violence “every day.” (PSI, p.6.) His parents divorced when he was ten years old. (PSI, p.6.)

Unfortunately, his mother and step-father were also methamphetamine addicts. (PSI, p.6.) He reported that his mother “was miserable” when she was coming off methamphetamine. (PSI, p.6.) She would throw cast iron pans at him, get extremely angry, and kick him out of the house for not doing his chores. (PSI, p.6.) His mother told him once that “she smoked a lot of pot” when she was pregnant with him. (PSI, pp.6–7.)

² Citations to the PSI refer to the 129-page electronic document containing the confidential exhibits, titled “Edwards 43596 psi.”

He grew up very poor, as his step-father would take his paycheck and disappear for the weekend to use methamphetamine. (PSI, p.7.) His family would wash their clothes with a hose outside and shower at their neighbor's house because they could not pay the bills. (PSI, p.7.)

Around the time of his parents' divorce, Mr. Edwards started using drugs and alcohol. (PSI, pp.10–11.) He first tried alcohol and marijuana at age eleven. (PSI, pp.10–11.) By age twelve, he was smoking marijuana every day. (PSI, p.11.) At age fourteen, he began using prescription controlled substance medications, including Vicodin, Oxycontin, Morphine, and Norco, and he was taking them every day by age sixteen. (PSI, pp.10–11.) In high school, he was high every day and drunk or high every weekend. (PSI, p.11.) He lived with his father for a year during high school because he was a “rebellious” teenager. (PSI, p.6.) During this time, his father physically abused him “constantly.” (PSI, p.6.) He returned to the custody of his mother after his father “beat the crap out of him” and Mr. Edwards called the police to report the abuse. (PSI, p.6.) Mr. Edwards stated that his childhood was “nothing but violence and drugs up until the last few years.” (PSI, p.7.) His mother and step-father had been clean for about two years at the time of sentencing. (PSI, p.7.)

At the time of the disposition hearing, Mr. Edwards had spent over half his life battling a severe drug addiction, brought on by a need to “escape reality” during his childhood and teenage years. (PSI, p.11.) Mr. Edwards had some setbacks on probation, but he was making progress in light of his family history and terrible experiences growing up. He did well on probation for over a year. (R., pp.189–93, 212–13.) He was employed, and he stayed off drugs. He worked for Southwark Metal and

PBT Auto Sales. (Tr. Vol. II, p.10, Ls.8–12.) He then worked for AAMCO until the business was sold. (Tr. Vol. II, p.10, Ls.12–14.) Mr. Edwards relapsed during this time. (Tr. Vol. II, p.11, Ls.3–7.) As explained by his mother in a letter to the district court, Mr. Edwards turned to drugs when he was a child “to escape the things he couldn’t handle” and “part of him stayed that little boy who needs to escape when things get really hard.” (PSI, p.126.) She believed, however, that Mr. Edwards could succeed with the “right rehabilitation.” (PSI, p.127.) She wrote that he was “a good person at heart” with potential to “do anything he sets his mind to.” (PSI, p.127.) Similarly, Mr. Edwards’s wife wrote a letter to the district court stating that Mr. Edwards had “lost sight of what was truly important,” but he had support from his family and church community to get back on the right path. (PSI, p.128.) She explained that Mr. Edwards was a “great provider” for their family and an important father figure for her two children. (PSI, p.128.) She stated that Mr. Edwards planned to attend Alcoholics or Narcotics Anonymous, start going to church again, stay employed, and avoid people who were negative influences in his life. (PSI, p.129.) In light of these facts, Mr. Edwards submits that the district court’s decision to revoke his probation and impose his aggregate sentence of ten years, with two years fixed, was an abuse of discretion. Mr. Edwards contents that the district court should have retained jurisdiction or reduced the indeterminate portion of his sentence.

CONCLUSION

Mr. Edwards respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that this Court vacate the district court's order revoking probation and remand his case for a new disposition hearing.

DATED this 20th day of January, 2016.

_____/s/_____
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 20th day of January, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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TIMOTHY HANSEN
DISTRICT COURT JUDGE
E-MAILED BRIEF

DANICA COMSTOCK
ADA COUNTY PUBLIC DEFENDER
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CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

JCS/eas